

House Bill 1217 (AS PASSED HOUSE AND SENATE)

By: Representatives Jerguson of the 22nd, Williams of the 4th, Glanton of the 76th, and Tumlin of the 38th

A BILL TO BE ENTITLED

AN ACT

To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, so as to provide for legislative intent; to provide definitions; to create the State Licensing Board of Home Inspectors; to provide for its membership, appointment, filling of vacancies, terms of office, qualifications, powers and duties, staffing, and meetings; to provide for licensing of home inspectors; to provide for qualifications and reciprocity under certain circumstances; to provide for renewals and continuing education; to prohibit certain acts; to provide for applicability; to provide for home inspection reports and their contents; to provide for insurance requirements; to provide for related matters; to repeal Article 6 of Chapter 3 of Title 8 of the Official Code of Georgia Annotated, relating to documentation by home inspectors; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by adding a new Chapter 39B to read as follows:

"CHAPTER 39B

43-39B-1.

It is the intent of the General Assembly in the interest of public health, safety, and welfare to require the regulation of home inspectors and to assure that consumers of home inspection services can rely on the competence of home inspectors. The practice of home inspection is declared a business or profession affecting the public interest, and this chapter shall be liberally construed so as to accomplish the intent and purposes stated in this chapter.

1 43-39B-2.

2 As used in this chapter, the term:

3 (1) 'Board' means the State Licensing Board of Home Inspectors.

4 (2) 'Business organization' means any partnership, corporation, limited liability entity,
5 business trust, joint venture, or other legal entity, other than an individual person, doing
6 business or seeking, offering, or contracting to do business as a home inspector or
7 otherwise performing or acting as a home inspector.

8 (3) 'Client' means any person who engages or seeks to engage the services of a home
9 inspector for the purpose of obtaining inspection of, and a written report upon, the
10 condition of a residential building.

11 (4) 'Component' means a readily accessible and observable aspect of a system, such as
12 a floor or wall, but not individual pieces such as boards or nails where many similar
13 pieces make up a system.

14 (5) 'Home inspection' means a visual analysis provided for compensation for the purpose
15 of providing a professional opinion of the condition of a building, its carports and
16 garages, and any reasonably accessible installed components and the operation of the
17 building systems, including, but not limited to, the controls normally operated by the
18 owner, for the following components of a residential building of four units or fewer or,
19 as applicable, of a residential unit: heating system, electrical system, cooling system,
20 plumbing system, structural components, foundation, roof covering, exterior and interior
21 components, and site aspects as they affect the building. A home inspection shall not be
22 required to include the condition of systems or components which are not readily
23 accessible.

24 (6) 'Home inspection report' means a written report prepared for compensation by a
25 home inspector issued to a client after a home inspection.

26 (7) 'Home inspector' means a person who is licensed pursuant to this chapter as a home
27 inspector and who engages in the business of performing home inspections and writing
28 home inspection reports.

29 (8) 'Readily accessible' means available for visual inspection without requiring the
30 moving of personal property, dismantling, destructive measures, or any action that likely
31 will involve risk to persons or property.

32 (9) 'Residential building' means a structure consisting of from one to four family
33 dwelling units.

34 (10) 'Residential unit' means an individual unit of a residential building or a single living
35 unit within a residential structure with a height of two or more stories, when such
36 residential structure is composed of condominium units, townhouses, or such similar
37 living units.

1 (11) 'Significantly deficient' means a system or component that is unsafe or not
2 functioning.

3 (12) 'System' means a combination of interactive or interdependent components
4 assembled to carry out one or more functions.

5 (13) 'Technically exhaustive' means an investigation that involves dismantling or the
6 extensive use of advanced techniques, measurements, instruments, testing, calculations,
7 or other means.

8 43-39B-3.

9 (a) There is created the State Licensing Board of Home Inspectors which shall consist of
10 six members. The board shall be assigned to the Office of the Secretary of State for
11 administrative purposes, shall be under his or her jurisdiction, and shall operate in
12 accordance with and pursuant to the provisions of Chapter 1 of this title. All members shall
13 be residents of the State of Georgia. One member shall be a public member. The public
14 member of the board shall not be connected in any way with the practice of home
15 inspection. One member shall be a residential and general contractor licensed pursuant to
16 Chapter 41 of Title 43. Four members shall be home inspectors. The home inspector
17 members who are initially appointed to the board shall have been actively engaged in the
18 practice of home inspection for at least five years immediately preceding their appointment,
19 shall have performed a minimum of 500 home inspections for compensation, and shall
20 demonstrate that they have passed an examination administered by a national examination
21 organization that complies with the standards established by the National Commission of
22 Certifying Agencies. On or after 24 months after the date this chapter becomes effective,
23 all home inspectors appointed to be members of the board shall be required to be licensed
24 pursuant to this chapter.

25 (b) The Governor shall appoint the members of the board, subject to confirmation by the
26 Senate, with consideration given to appropriate geographic representation. Any such
27 appointments made when the Senate is not in session shall be effective until acted upon by
28 the Senate.

29 (c) The term of each member of the board shall be five years, except that the initial four
30 home inspector members shall be appointed to serve terms expiring 24 months after the
31 date this chapter becomes effective, 36 months after the date this chapter becomes
32 effective, 48 months after the date this chapter becomes effective, and 60 months after the
33 date this chapter becomes effective, respectively. Any vacancy on the board shall be filled
34 in the same manner as the original appointment, and the person so appointed shall serve for
35 the remainder of the unexpired term.

43-39B-4.

(a) The board shall meet at least quarterly each year for the purpose of transacting such business as may properly come before it and of overseeing its operations.

(b) In addition to and consistent with the powers granted in Chapter 1 of this title, the board shall have the power to:

(1) Request from the various departments, agencies, and authorities of this state and its political subdivisions and their agencies and authorities such available information as it may require in its work; and all such departments, agencies, and authorities shall furnish such requested available information to the board and its divisions within a reasonable time;

(2) Provide by regulation for reciprocity with other states or territories of the United States in the licensing of home inspectors, provided that such other states have requirements at least substantially equal to the requirements in force in this state for registration, licensure, or certification, and that any such home inspector holding a current and valid license, certificate, or registration from another state or territory seeking licensure by way of reciprocity shall demonstrate that such applicant meets, in the discretion of the board, the qualifications, requirements, and criteria set forth in this chapter;

(3) Establish and adjust fees as necessary in accordance with Chapter 1 of this title;

(4) Adopt official seals for its use and change them at its pleasure;

(5) Establish any policies and procedures for regulating the businesses of home inspection beyond those contained in the code of ethics and standards of practice for home inspectors which are required by subsection (c) of this Code section; and

(6) Promulgate and adopt rules and regulations necessary to carry out this chapter.

(c) The board shall promulgate standards of practice and a code of ethics for the practice of home inspectors.

43-39B-5.

(a) Anyone seeking to be licensed as a home inspector in this state shall file an application on a form provided by the board accompanied by an application fee as provided by the board.

(b) A person shall be eligible for licensure as a home inspector if he or she:

(1) Is at least 18 years of age;

(2) Is of good moral character;

(3) Has not been convicted of a crime that has a direct bearing on the person's ability to perform competently and fully as a licensee;

(4) Has successfully completed high school or its equivalent;

1 (5) Has:

2 (A) Completed a board approved course of study of no less than 80 hours that covers
3 all of the following components of a residential building of four units or less: heating
4 system, cooling system, plumbing system, electrical system, structural components,
5 foundation, roof covering, exterior and interior components, and site aspects as they
6 affect the building; or

7 (B)(i) Presented documentation as required by the board that he or she has been
8 engaged in the practice of home inspection for compensation for not fewer than three
9 years prior to the effective date of this chapter; and

10 (ii) Performed not fewer than 100 home inspections for compensation; and

11 (6) Has passed a valid, reliable examination designed to test competence in home
12 inspection practice and developed pursuant to accepted psychometric standards
13 promulgated by the American Educational Research Association or similar organization
14 acceptable to the board. The board shall designate such examination no later than six
15 months after the date this chapter becomes effective.

16 (c) Any otherwise qualified applicant failing the examination required by this chapter may
17 be reexamined at any regularly scheduled examination within one year of the date of
18 original application upon payment of a reexamination fee in an amount to be set by the
19 board, without need to resubmit an application, unless any information set forth in the
20 previously submitted application is no longer accurate or complete. Anyone requesting to
21 take the examination a third or subsequent time shall wait at least one calendar year after
22 the taking of the last examination and shall submit an application with the appropriate
23 examination fees.

24 43-39B-6.

25 Notwithstanding any other provision of this chapter to the contrary, any person who holds
26 a current and valid home inspector license, certification, or registration issued by another
27 state or territory of the United States, where either such state or territory has entered into
28 a reciprocal agreement with the board for the recognition of home inspector licenses issued
29 in that state or territory or such application is pursuant to and in accordance with the
30 regulations and requirements for reciprocity promulgated by the board, shall be eligible for
31 licensure as a home inspector without examination under the provisions of this chapter,
32 provided that such person submits a proper application and proofs, pays or has paid the
33 required fees, otherwise meets the requirements of this chapter, is not otherwise in violation
34 of this chapter, and such person and such application meet the following requirements:

(1) The criteria for issuance of such license, certification, or registration by such other state or territory, including the requirement to successfully complete an examination, were at least substantially equivalent to Georgia's current license criteria;

(2) The application requirements and application form submitted to the other state or territory upon which such license was issued and the examination form and substance shall be available for review by the board and the examination results shall be made available to the board; and

(3) The standards of practice of such state or territory are at least substantially similar to those adopted by the board.

43-39B-7.

(a) Home inspector licenses shall be renewable biennially in accordance with procedures established by the board.

(b) As a condition of license renewal, a licensed home inspector shall complete at least 30 hours of board approved continuing education during each renewal period.

43-39B-8.

(a) On and after 18 months after the date this chapter becomes effective, no person shall provide nor present, call, or represent himself or herself as able to provide a home inspection for compensation unless he or she is licensed in accordance with the provisions of this chapter.

(b) Any person who, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offers, attempts, or agrees to perform or performs any single act of home inspection shall be deemed a home inspector within the meaning of this chapter. The commission of a single such act by a person who is required to have a home inspector license under this chapter but who has not obtained such license shall constitute a violation of this chapter.

43-39B-9.

(a) On and after 18 months after the date this chapter becomes effective, no business organization shall provide home inspection services unless each of the home inspectors employed by the business organization is licensed in accordance with the provisions of this chapter; provided, however, that an unlicensed person may accompany a home inspector licensed in accordance with this chapter for training purposes.

(b) On and after 18 months after the date this chapter becomes effective, no business organization may use in connection with the name or signature of the business organization the title 'home inspector' to describe the business organization's services unless each of the

home inspectors employed by the business organization is licensed; provided, however, that an unlicensed person may be employed by the business organization and accompany a home inspector licensed in accordance with the provisions of this chapter for training purposes.

(c) No license as a home inspector shall be issued to a business; provided, however, that nothing in this Code section shall preclude a licensed home inspector from performing home inspection services on behalf of a business so long as such services are performed in compliance with the requirements of this chapter.

43-39B-10.

On and after 18 months after the date this chapter becomes effective, it shall be unlawful for any person:

(1) Directly or indirectly, to engage in or conduct the business of, advertise or hold himself or herself out as engaging in or conducting the business of, or act in the capacity of a home inspector within this state without first obtaining a license as required by this chapter;

(2) To perform or offer to perform for an additional fee any repairs to a structure on which the home inspector or the home inspector's company has prepared a home inspection report; provided, however, that a home protection company that is affiliated with or retains a home inspector shall not be in violation of this paragraph if it performs repairs pursuant to a claim made under a home protection contract;

(3) To inspect for a fee any property in which the home inspector or the home inspector's company has any financial interest or any interest in the transfer of the property;

(4) To offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or the agent for the referral of any business to the home inspector or the home inspection company;

(5) To accept an engagement to make a home inspection or to prepare a home inspection report in which the home inspection itself or the fee payable for the home inspection is contingent upon the conclusions in the home inspection report, preestablished findings, or the close of escrow; and

(6) In the course of performing a home inspection or preparing and presenting a home inspection report, to cite a violation of the state minimum standard codes, as enumerated in paragraph (9) of Code Section 8-2-20, if such person does not hold a certification from the appropriate accrediting organization for the code in which the violation is cited.

43-39B-11.

Nothing in this chapter shall prohibit:

(1) A person who is employed by a governmental entity from inspecting residential buildings if the inspection is within that person's official duties and responsibilities;

(2) A person from performing a home inspection if the home inspection will be used solely by a bank, savings and loan association, or credit union to monitor progress on the construction of a residential building;

(3) A person who is employed as a property manager for a residential building and whose official duties and responsibilities include inspecting the residential building from performing an inspection on the structure if the person does not receive separate compensation for the inspection work;

(4) A person who is regulated in another profession from acting within the scope of that person's license, registration, or certification;

(5) A home inspector from performing a home inspection or preparing a home inspection report for a single living unit within a residential structure with a height of two or more stories, so long as the inspection is confined to the components, systems, and condition of that single living unit; or

(6) A person who is not a licensed home inspector, but who is in training to become a home inspector, from performing tasks under the direct, on-site supervision of a licensed home inspector in accordance with the requirements established by the board.

43-39B-12.

(a) A home inspector shall perform a visual inspection of the readily accessible installed systems and components of residential buildings or residential units and provide a home inspection report within a reasonable time period.

(b) A home inspection report shall cite:

(1) Those systems and components inspected which, in the professional opinion of the home inspector, are significantly deficient or are near the end of their service lives;

(2) A reason why, if not self-evident, the system or component is significantly deficient or near the end of its service life;

(3) The home inspector's recommendations, if any, on how to correct or monitor the reported deficiency; and

(4) Any systems and components listed in paragraph (5) of Code Section 43-39B-2 which were present at the time of the home inspection but were not inspected and a reason they were not inspected.

(c) A home inspector may:

(1) Include other inspection services, systems, or components in addition to those required;

(2) Specify repairs, provided the home inspector is appropriately qualified and willing to do so; and

(3) Exclude systems and components from the home inspection if requested in writing by the client.

(d) A home inspection shall not be required to:

(1) Be technically exhaustive; or

(2) Identify concealed conditions or latent defects.

43-39B-13.

A home inspector shall not be required to:

(1) Offer warranties or guarantees of any kind;

(2) Perform any action or make any determination unless specifically stated in any standards of practice adopted by the board or except as may be required by lawful authority; or

(3) Perform any procedure or operation that shall, in the opinion of the inspector, likely be dangerous to the home inspector or other persons or damage the property or its systems or components.

43-39B-14.

The board shall require a home inspector to maintain liability insurance in an amount established by the board.

43-39B-15.

It shall be unlawful for a home inspector to engage in the practice of architecture under Chapter 4 of this title, engineering under Chapter 15 of this title, or residential or general contracting under Chapter 41 of this title unless the home inspector is also licensed under Chapter 4, Chapter 15, or Chapter 41 of this title, as applicable.

43-39B-16.

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor."

SECTION 2.

Article 6 of Chapter 3 of Title 8 of the Official Code of Georgia Annotated, relating to documentation by home inspectors, is repealed in its entirety.

SECTION 3.

This Act shall become effective only if funds are specifically appropriated for purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.